IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.299 of 2004

Commissioner of Income Tax
Chennai .. Appellant

Vs

M/s.Yak Granite Industries P Ltd
Chennai .. Respondent

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 25.7.2003 made in ITA No.721/Mds/1994 for the assessment year 1990-91 against the order of the Commissioner of Income Tax (Appeals)IV Madras 600 034 dated 27.12.1993 made in ITA No.574/92-93 against the order of the Asst. Commissioner of Income Tax, Comp.Cir.IV (5), Madras-6 in Pan/Gir No.47-055-CY-4692 dated.28.1.1993.

For Appellant : Mrs.Pushya Sitaraman
Sr.Standing Counsel for I.T.
For Respondent : Mr.M.P.Senthilkumar

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J U D G M E N T
(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 25.7.2003 made in ITA No.721/Mds/1994 raising the following substantial question of law:

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"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the benefit of Section 80HHC is available for export of granites that were cut and polished?"

2. The assessee is engaged in excavating granites and cutting them into pieces, polishing them and then exporting them to foreign country. The assessee claimed that this process of cutting and polishing is manufacturing activity that has brought the finished product from the raw materials excavated from the mines. However, the Assessing Officer disallowed the deduction claimed by the assessee under Section 80HHC of the Act on the ground that the assessee's activity of excavation, cutting and polishing the granites does not amount to manufacture. The appeal preferred by the assessee against the above order was dismissed by the Commissioner of Income Tax (Appeals). On further appeal, the Tribunal allowed the appeal of the assessee and held that the processing done on the granite like sizing and polishing etc. constitute manufacture. Hence, the present appeal.

3. Heard both sides. It is fairly conceded on behalf of learned counsel for the appellant and the assessee that the question of law raised in this appeal is answered in favour of the Revenue by the decision in Gem Granites Vs. Commissioner of Income-tax [2004] 271 ITR 322.

4. The Apex Court in Gem Granites Vs. Commissioner of Income-tax [2004] 271 ITR 322, held that :

"There are no words of restriction in section 80HHC(2)(b) of the Income-tax Act, 1961, before amendment in 1991, which qualify the word “mineral” and it would be reasonable to assume that in the absence of such limitation, the word must be read to include all kinds of minerals, in all forms, i.e., whether subjected to any process or not, as long as it continued to retain the characteristics of the mineral. Granite is covered by the word “minerals” in the exclusionary clause (b) of sub-section (2) of section 80HHC. For the unamended section 80HHC(2)(b) cut and polished granite would also be a mineral, and export thereof would not qualify for the special deduction under that section.

The introduction of the phrase “other than” in clause (b) of sub-section (2) of section 80HHC in 1991 indicates the carving out of a specific class from the generic class of “minerals and ores”. This means that, were it not for the exception, the specified processed minerals and ores would have been covered by the words “minerals and ores”. It also indicates that, after the 1991 amendment, only minerals and ores subjected to the process of cutting and polishing would be entitled to the benefit of section 80HHC, meaning thereby that all other species of minerals and ores would continue to be covered by the general exclusion applicable to the generic class.

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The benefit of section 80HHC has been extended by the 1991 amendment to a specific kind of mineral and was introduced for the first time in 1991.

The assessee which exported granite after being cut and polished was not entitled to claim the deduction under section 80HHC of the Income-tax Act, 1961, in respect of the profits from the export business for the assessment year 1987-88."

(emphasis supplied)

5. By applying the ratio of the aforementioned judgment to the facts of this case, we hold that the export of granite, whether cut into blocks and polished or not, is not entitled to deduction under Section 80HHC for the period prior to 1st April, 1991.

In the result, this appeal is allowed answering the question of law in favour of the Revenue and against the assessee.

sasi

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   Rajaji Bhavan, Besant Nagar,
   Chennai

2. The Commissioner of Income-tax (Appeals)-IV
   Madras

3. The Commissioner of Income-tax, Chennai.

4. The Asst. Commissioner of Income Tax
   Comp.Cir. IV(5), Madras-6.

+1 cc to M/s.Pushya Sitaraman, Advocate Sr.No.35681.

GG(CO)
dcp/25.06.07

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